

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 97-1063

Sandra K. Dunham, Dr., D.V.M.,

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Appellee,

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v.

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Appeal from the United
States District Court for the
Eastern District of Arkansas.

George Wadley, Dr., D.V.M.;
Wingfield Martin; Everett I. Rogers,
Dr., D.V.M.; G. C. Blair, Dr., D.V.M.;
James W. Waymack, Dr., D.V.M.;
Donald I. Mayfield, Dr., D.V.M.;
Gary F. Strickland, Dr., D.V.M.;
Sherry Glover,

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Appellants.

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[UNPUBLISHED]

Submitted: June 13, 1997

Filed: August 28, 1997

Before McMILLIAN, BOWMAN, and MORRIS SHEPPARD ARNOLD, Circuit
Judges.

PER CURIAM.

Defendants appeal from the order of the District Court¹ denying their motion pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss plaintiff's complaint on grounds of sovereign immunity, absolute immunity, and qualified immunity. In denying Rule 12(b)(6) dismissal, the court noted that plaintiff, in her Second Amended Complaint, seeks damages from defendants in their individual capacities only and therefore that defendants' arguments concerning the State's Eleventh Amendment immunity from suit were inapposite. The court further expressed its doubts that plaintiff ultimately could overcome the defenses of quasi-judicial, prosecutorial, or qualified immunity, but found that further factual development would be necessary before it could rule on these immunity defenses. Finally the court invited defendants to file a motion for summary judgment if they wished the court to consider whether they were entitled to judgment as a matter of law, once the record had been further developed.

Instead of pursuing the District Court's invitation to beef up the record and then file a motion for summary judgment on the immunity defenses, defendants have filed this appeal. They argue that the District Court erred in denying the various immunity defenses they asserted in their Rule 12(b)(6) motion, including their claim of sovereign immunity. Having heard argument and having considered the record and the briefs of the parties, we are satisfied the District Court was correct in denying defendants' 12(b)(6) motion. Sued in their individual capacities, defendants are not entitled to the State's Eleventh Amendment immunity. In addition, we agree with the District Court that this is a case in which further factual development is required before defendants' claims of entitlement to dismissal on any of the other asserted immunity grounds may properly be adjudicated. Because an extended opinion would serve no useful purpose, the order of the District Court is summarily affirmed. See 8th Cir. R. 47B.

¹The Honorable James Maxwell Moody, United States District Judge for the Eastern District of Arkansas.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.